IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3464 of 1986
WITH
SPECIAL CIVIL APPLICATION No. 7454 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SIDHARATHA DAS & 38 - Petitioner(s)
Versus
O.N.G.C . & 5 - Respondent(s)

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Appearance :
MR SHALIN N MEHTA for Petitioners
MR RAJNI H MEHTA for Respondent No. 1.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/11/2005

COMMON ORAL JUDGMENT

1.Special Civil Application No. 3464 of 1986 is filed by 39 petitioners. The petitioners have prayed for the directions to the respondent Commission to treat the petitioners as appointed to the post of Geologist with effect from the date the petitioners had been appointed to the post of Assistant Geologist in the respondent Commission and to extend all consequential benefits like deemed date of seniority, deemed date of further promotion, difference in salary, increments etc. The petitioners have also prayed for the stay restraining the respondent - Commission from effecting promotions from the cadre of Geologist to the cadre of Senior Geologist without first preparing the seniority list of the Geologists after giving the petitioners the deemed date of seniority of the Geologists, with effect from the date the petitioners had

been appointed to the post of Assistant Geologists. The petitioners have filed this petition in representative capacity and sought permission to sue respondent Nos. 5 & 6 under Order I Rule 8 of C.P.C.

2.The petition was admitted and rule was issued on 11.07.1986. As per the order passed by this Court on 25.11.1994 in C.A. No. 2794 of 1994, petitioner Nos. 1,3 to 8, 10 to 17, 19 to 22, 24 to 29, 31,32,34 to 36, 38 & 39 were deleted. The petitioner Nos. 9 & 18 have already resigned from the service. As far as petitioner No. 11 is concerned, initially he has withdrawn as per the assurances given by the respondent Commission. However subsequently, he has raised the grievance by filing C.A. No. 1194 of 2002 making prayer for impleading him in the main petition and while rejecting the said application on 04.07.2002, this Court has observed that it will be open for him to file

substantive petition and his claim can be decided in that substantive petition on its own merits. Pursuant to the said order passed by this Court, the petitioner No. 11 has filed substantive petition being Special Civil Application No. 7454 of 2002. The said petition was admitted and rule was issued on 19.08.2002. The Court has while admitting the petition has ordered that the same would be heard with main petition, namely, Special Civil Application No. 3464 of 1986. The Court has clarified that the said petition was admitted and ordered to be heard with the aforesaid petition only because the petitioner was already one of the petitioners in Special Civil Application No. 3464 of 1986. The Court has also clarified that admission of the petition and tagging it with Special Civil Application No. 3464 of 1986 was only to ensure that the case of the present petitioner would be considered with the case of the petitioners in

Special Civil Application No. 3464 of 1986. The Court has also made it very clear that admission of the petition would not be construed as expression of any opinion on the merits of the case.

3.In the above background of the matter, both these petitions are taken up for final hearing.

4.Mr. Shalin Mehta, learned advocate appearing for the petitioners in both these petitions has submitted that the respondent Commission had issued advertisement No. 5/80 inviting applications for the posts in the pay scale of Rs. 820-1680 for vacancies existing in Engineering, Production and Geo Science disciplines. In the Geo Science discipline, the post carrying the pay scale of Rs. 820-1680 at the relevant time was that of Geologist. The petitioners applied for the said post of Geologist (Class I post). For recruitment to

the said post, the respondent – Commission conducted a common written test wherein about 3,000 candidates participated. 40 candidates came out successful in the written test and were therefore called for interview. After completion of the interview, the petitioners were individually sent similar letters of appointment for the post of Assistant Geologists (Class II post) in the scale of pay of Rs. 750-1500. Mr. Mehta has further submitted that the petitioners were neither called for written test for the post of Assistant Geologist nor had they attended the interview for the said post. Mr. Mehta has further submitted that the petitioners have accepted the said appointment under the impression that possibly there were no sufficient number of vacancies for the post of Geologist. However, after the petitioners joined the respondent – Commission, they came to know to their utter shock and surprise that

all the 46 candidates who had ultimately come out successful at the interview were offered the post of Assistant Geologist (Class II post in the Geo Science discipline) whereas in all other disciplines, the candidates who had similarly attended the written test and participated in the interview had been offered Class I post.

5.Mr. Mehta has further submitted that the petitioners have repeatedly made representation to the various authorities including the Chairman of the respondent – Commission requesting them to consider their case that injustice has been done to them by issuing appointment order for the post of Assistant Geologist whereas they have been called for written test and personal interview for the post of Geologist. The petitioners came to know only in the year 1985 when the representation made by the petitioners was

decided wherein it was held that the petitioners were not found qualified and hence, the petitioners were offered the post of Assistant Geologist. Mr. Mehta has, therefore, submitted that their appointment orders for the Class II posts were absolutely illegal, uncalled for and they have been denied the benefits to which they were entitled right from the date on which they were appointed on Class II post.

6.Mr. Mehta has further submitted that the petitioners have challenged the impugned action of the respondent – Commission mainly on six grounds. He has submitted that advertisement was issued for the post of Geologist and not for Assistant Geologist. The petitioners have appeared in the written test for Class I post and personal interviews were also held for Class I post. He has, therefore, submitted that there is no logic in issuing appointment

order for the Class II post i.e. Assistant Geologist. So far as other two disciplines are concerned, the applications were invited for Class I post and written test and interview were also held for Class I post and as such, the appointment orders were also issued to the successful candidates for Class I posts. He has, therefore, submitted that there is no justification in issuing the appointment order for Class II post so far as the present petitioners are concerned. Mr. Mehta has further submitted that the ground for rejection of the petitioners' representation was absolutely false in view of the subsequent affidavits filed before this Court as while rejecting the representation, it was stated that the petitioners were not found suitable whereas in the affidavits filed before this Court it was stated that there were no vacancies and hence, option was given to the petitioners either to accept Class II post or

reject the appointments. He has, therefore, submitted that the reason given by the respondent – Commission while rejecting the petitioners' representation is not sustainable especially when the same was not adhered to and when there were existing vacancies. Mr. Mehta has thereafter submitted that even if the petitioners have accepted the appointment for the Class II post, there is no question of denying them Class I post on the ground of waiver as the petitioners are entitled to be considered for Class I post. There is no waiver of such right. Lastly, Mr. Mehta has submitted that though the ground was raised in the reply that there was no vacancy, actual vacancies were found and advertisements were also issued for existing vacancies. In the above view of the matter, there is no justification to deny the benefits which have already been accrued to the petitioners. Mr. Mehta has, therefore, submitted that the

prayers made in these petitions are required to be granted.

7.Mr. R.H. Mehta, learned advocate appearing for the respondent – Commission has relied on the reply, sur-rejoinder and the additional affidavit filed on behalf of the respondent – Commission. First of all, he has invited the attention of the Court to the additional affidavit filed on 04.03.2003 wherein it has been stated that ONGC Executive Committee (E.C.) took a decision on 16.06.1993 which was challenged in S.C.A. Nos. 6276 & 6793 of 1993 and subsequently in L.P.A. Nos. 182 & 193 of 1994 arising from those Special Civil Applications. The Executive Committee's decision dated 16.06.1993 was quashed and set aside by the Division Bench of this Court in L.P.A. Nos. 182 & 193 of 1994 by judgment dated 1/2-12/1994 (reported in (1995) 1 G.L.H. 651). The respondent – Commission has filed Special

Leave Petition before the Hon'ble Supreme Court and the same was also summarily dismissed. The observations made by this Court in the order dated 17.04.1994 are relevant for the purpose of the present petitions. It was observed therein that though the petitioners appeared in the examination for selection to E-1 post, they were in fact offered appointments in the E-0 post. It was further observed that the incumbents willingly and voluntarily accepted the offers of appointment on probation. The pay scales to which they were appointed were less than the pay scales of E-1 Officers whereas E-1 posts are Class-1 posts, E-0 posts are class-II posts. It was further observed that the question of there being any anomalies, as has been contended by the respondents, does not arise in view of the fact that the parties have acted voluntarily and had accepted a lower post than what they had appeared for. Mr. R.H. Mehta has further submitted that in view of the

Hon'ble Supreme Court's decision, ONGC in its 146th Executive Committee meeting held on 21.03.1996 has taken the decision that status-quo ante prevailing before the EC decision dated 16.06.1993 restored as if the EC decision has not been implemented at all and that order already issued extending benefit of EC decision to various officers be withdrawn by issuing suitable show-cause notice. It is further stated that one Mr. K.S.V.R. Rao and another filed writ petition (Civil) No. 48 of 1996 in the Hon'ble Supreme Court contending that as per the EC decision dated 16.06.1993, the petitioners being Assistant Geophysicists (similar to the present petitioners) recruited at E-0 level may be promoted with effect from 24.04.1980 to the post of E-1 level. The Hon'ble Supreme Court vide order dated 04.04.2000 has held that even if the relief prayed for is granted after passing of two decades, that would be unsettling the rights of

the parties which are already settled and attained finality and dismissed the petition by order dated 04.04.2000. Even the Review Petition (Civil) No. 911 of 2000 was also dismissed by the order dated 16.04.2001. Relying on the said order, Mr. R.H. Mehta has submitted that the said decision is equally applicable to the present case and therefore also, the present petitions deserve to be dismissed.

8. Over and above the aforesaid submissions, Mr. R.H. Mehta has relied on the contentions raised by the respondent – Commission in the affidavit-in-reply as well as in Sur-rejoinder. Mr. Mehta has placed certain relevant facts before the Court on the basis of the facts stated and averments made in the affidavit-in-reply. Mr. Mehta has further submitted that advertisement No. 5/80 was given in August, 1980 for recruitment to Class I post in the pay

scale of Rs. 820 – 1680 in various disciplines. In the advertisement, it was specifically stated that this advertisement was for existing vacancies. However, when the competent authority approved the select list, no vacancies of Geologist Class I posts were available in the Commission. The select list was finally approved by the competent authority in January, 1981. No vacancies of Geologist Class I posts were available in the Commission and the vacancies which were available were already filled up by promotion from amongst the departmental class II employees prior to the select list approved by the competent authority on 31.01.1981. Mr. Mehta has further submitted that there were vacancies for the post of Assistant Geologist Class II in the pay scale of Rs. 750 – 1500. These posts of Assistant Geologists were required to be filled up by promotion as per Oil & Natural Gas Commission (Recruitment and Promotion) Regulations, 1980.

Regulation 4 of Schedule II of the Regulations, 1980 provides that if persons who fulfill the criteria as laid down for promotion for the posts are not available within the Organization, the competent authority may fill the posts by direct recruitment. He has further submitted that as sufficient employees were not eligible for promotion to the Class II posts of Assistant Geologist, the Standing Committee of the Commission accorded special approval, in exercise of the powers conferred under Regulation 4 of Schedule II of Regulations, 1980, in its meeting held on 4.06.1981 for filling up of these Class II posts by direct recruitment from amongst the candidates selected against Advertisement No. 5/1980 whose valid panel was in hand. The petitioners were accordingly offered appointment to the post of Assistant Geologists. The petitioners were well aware before joining the Commission that they were

being offered the lower posts and not the posts of Geologist in the pay scale of Rs. 820 – 1680 and it was open for them to accept or reject the offer. The petitioners chose to accept the posts of their own volition, with full knowledge and consciousness about the grade. Hence, the petitioners had no inherent right to be appointed to a particular grade merely on account of their having been selected against Advertisement No. 5/80. The appointments of selected candidates are always subject to availability of vacancies and the right of the employees flow from the offer of appointment. He has further submitted that the selected candidates have no inherent right to demand appointment in a particular grade in which vacancies are not available. He has further submitted that non-availability of vacancies in Geologist Department is also borne out by the fact that these posts did not appear in the Advertisement No. 3/81 published in July, 1981.

The number of vacancies available at any stage differ from discipline to discipline. The petitioners belonging to Geologist discipline cannot demand appointment to Class I post of Geologist in absence of vacancies on the ground that candidates selected in other disciplines were appointed to Class I posts as vacancies in those disciplines were available.

9.Mr. R.H. Mehta has further submitted that the Commission gave an advertisement No. 4/81 in August, 1981 for special recruitment to meet the expected requirement of hands including of Geologist Class I for North-Eastern States (Assam, Tripura etc.). The select list for candidates selected against Advertisement No. 4/81 was finalised and approval was accorded to this select list in December, 1982. Some of the petitioners had applied and in fact selected to the post of Geologist against Advertisement No. 4/81. Another advertisement

No. 5/82 was also issued in 1982 and some of the petitioners responded to the same and got selected to Class I posts. All those selected against Advertisement Nos. 4/81 & 5/82 were offered appointments to Class I posts. Some of them did not join the Class I posts in North-Eastern States. Some petitioners did not apply against Advertisement Nos. 4/81 & 5/82. When substantial number of vacancies in Class I posts of Geologists came up in 1983, a special interview for the remaining persons was arranged on 18.04.1993 and on selection, they were given Class I posts of Geologist. He has further submitted that the entire select group as such got placement in Class I posts of Geologist either through Advertisement Nos. 4/81 & 5/82 or through special interview of 18.04.1983. He has further submitted that the Commission had a genuine difficulty in as much as no vacancies in Class I posts were available in 1981 and 1982 and as soon as substantial

number of vacancies in Class I posts came up, the Commission went all out of the way to absorb the petitioners in Class I posts even by holding a special interview.

10.Mr. Mehta has further submitted that letter dated 16/19th April, 1985 is not correct in its contents. All the petitioners were found suitable by a duly constituted selection board for the post of Geologist but could not be appointed to that post in view of the fact that there was not a single vacancy available when they were selected. He has further submitted that actually 62 candidates were selected for the posts of Geologist against Advertisement No. 5/80. Two of the selected candidates were already holding Class II posts of Assistant Geologist and all the remaining 60 were offered appointments to Class II posts in absence of Class I vacancies. Only 46 of those 60 accepted the offer and joined. Three of them

resigned, after joining the Class II posts of Assistant Geologist, leaving 43 persons. Out of these 43 persons, 39 persons have filed the present petition. Mr. Mehta has further submitted that the seniority of the petitioners cannot be maintained as Geologists as there were no posts of Geologists available and they were appointed to the post of Assistant Geologists which they have accepted unconditionally. At the material time as vacancies were not available, the Commission could not appoint the petitioners to Class I posts. Hence, the relief prayed for by the petitioners may not and should not be granted.

11.The petitioners have filed rejoinder disputing some of the contentions raised in the affidavit-in-reply. The respondent Commission has also filed affidavit-in-sur-rejoinder reiterating and reasserting the contentions raised in the affidavit-in-reply.

12.After having heard learned advocates appearing for the respective parties and after having gone through their pleadings, documentary evidence and relevant rules and the order passed by the the Hon'ble Supreme Court in writ petition (Civil) No. 48 of 1996 on 04.04.2000, the Court is of the view that the remaining petitioners are not entitled to the relief prayed for in these two petitions. The grounds which are raised by the petitioners in this petition though look very attractive, in substance, the said grounds are not weighed with the Court. It is true that the advertisement was issued for Class I posts, written tests and interviews were held for Class I posts and in the advertisement also, it was mentioned that the applications were invited for the existing vacancies. However, the respondent – Commission has come out with the contention that at the time when the

selection list was prepared, there was no existing vacancies. Whether there was any existing vacancies or not is a disputed question and both the parties asserted their versions by raising necessary pleadings. But it is not the function of the Court to decide in the petition as to whether such vacancies were there or not. Moreover, when the appointment letters were issued to the petitioners for the post of Assistant Geologists by the respondent – Commission, the same were duly accepted. The option was given to them either to accept or to reject the same. At that point of time, there was no inherent right vested in the petitioners for the post of Geologist. The petitioners accepted the said offers in the year 1981. Even there is no whisper to the effect that the said offer was accepted under protest keeping their right alive. This Court has also considered this aspect in L.P.A. Nos. 182 & 193 of 1994 by

judgment dated 1/2.12.1994 (reported in (1995) 1 G.L.H. 651) and it was observed that the parties have acted voluntarily and had accepted the lower post. The same situation is in the present case and hence, there is force in the contention raised by Mr. R.H. Mehta, learned advocate appearing for the respondent – Commission that the said decision is equally applicable to the facts of the present case. First of all, the Court is not accepting the proposition canvassed on behalf of the petitioners that an inherent right is vested in the petitioners and their right to be considered for appointment to the post of Class I is an inherent right and it has been violated. In view of the fact that when there is no vacancies for Class-I posts at the relevant time, there is no question of considering their case for the appointment to the Class I posts. Secondly, the petitioners were appointed in 1981. They were promoted to

Class I posts in 1993. After 1983, they have started making their representation and their representation was rejected in 1985. However in 1986, they have filed the present petition. The present petition was straight away admitted and hence, there was no occasion with the respondent – Commission to bring to the notice of the Court the facts regarding vacancies and other details. It has come for the first time in the reply affidavit filed in 1987 and after 1987, despite the fact that pleadings were completed much earlier, the petitions could not be taken up for final hearing. Now in 2005, the relief prayed for by the petitioners in this petition, if it is granted, as observed by the Hon'ble Supreme Court, the same would unsettle the situation and it would affect the interest of many other persons. The chaotic situation would arise and normally the Court would not pass any such order giving rise to chaotic situation.

13.Considering the various aspects of the matter coupled with the submissions made by the respondent - Commission in the pleadings, the Court is of the view that it is not just, proper and equitable to grant the relief as prayed for by the petitioners in the present petitions as it would ultimately unsettle the settled situation. The petition is, therefore, dismissed. Rule discharged without any order as to costs.

14.Since Special Civil Application No. 3464 of 1986 is dismissed, there is no question of granting any relief in Special Civil Application No. 7454 of 2002. The said petition also stands dismissed. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

S*avariya*